Citizens Advice submission to the Natural Migration Inquiry - February 2019

About Citizens Advice

Citizens Advice provides free, confidential and independent advice to help people overcome their problems. In 2017-18, we helped 2.6 million people face to face, over the phone, by email and web chat. We provide support in over 2,000 locations in England and Wales.

Since the rollout began, we have helped **over 190,000 people** with Universal Credit (UC) issues. Thousands more have accessed our Universal Credit advice content online.

The geographical scope of this response covers **England and Wales**.

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1. Introduction

1.1 Citizens Advice support Universal Credit's aims to simplify the benefits system, help people into work and take more hours, and support those who can't work. However, this opportunity is being undermined by delivery challenges and a number of design problems which are negatively impacting on some claimants - many of whom are in vulnerable situations.

1.2 We welcome the Government's recent investment and improvements to UC announced in the 2018 budget. However as highlighted in our latest reports, there remains fundamental problems with the benefit which still need to be addressed before millions more people are moved on to it.

1.3 In spite of the latest investment almost 2.8 million households could still see a financial loss as they move to UC, when comparing entitlement under the legacy system. This compares to 2.1 million who are set to gain from the transition to UC. A further 2.1 million will receive the same level of support[1].

1.4 In recognition that some households will be financially worse off on the new benefit the Government is proposing to provide transitional protection (i.e. top-up payments) to some claimants during the 'managed migration' process. This is

[1] Budget 2018: How will incomes of people on Universal Credit be affected, Policy in Practice, November 2018

welcome and will ensure these families have the security of their level of income during the transition to UC.

1.5 We are however concerned about the disparity between claimants who will be transferred on to UC through the managed migration process and people who will 'naturally migrate' before that process begins following a change in their personal circumstances. These claimants will not get any transitional protection.

1.6 The delay in the large scale managed migration of existing legacy benefit claimants onto UC, announced by the Secretary of State in January 2019, is very welcome. This should allow testing of the process before the final rules are set. In the interim however, it is estimated around 1.6 million people[2] are due to move on to UC over the next year. This includes new claimants but also many people who have a change of circumstances and as a consequence will 'naturally migrate' to the benefit.

1.7 Not only will many of these people miss out on transitional protection, some will also experience the ongoing problems with the benefit. Our most recent report shows how significant numbers of people are having problems managing their money on UC[3]. While changes introduced by the Government since 2017 have started to help people they've only made a dent in the problem rather than fix it. Further changes are urgently needed so that people are paid enough to live on and in a way which reflects their lives and how they budget. Some of the changes to UC, announced by the Government in recent months - such as the new legacy benefit run ons - will not currently be implemented in time to provide support to claimants who will naturally migrate onto UC.

1.8 In our response below we set out what we believe needs to be done now to protect those who face the biggest financial losses under UC from migrating onto the benefit naturally, and to ensure all potential UC claimants fully understand what having a change of circumstances over the next 18 months or so could mean to their legacy benefit claim(s).

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[2] Amber Rudd, Hansard, Universal Credit: Transition, January 2019

[3] 'Managing money on Universal Credit, Citizens Advice, February 2019

Inquiry questions:

2. Which groups of people stand to lose out most when they transfer to Universal Credit? What should the Government be doing to support those groups?

2.1 Ensuring that people going through significant life events don't face a penalty

2.1.1 Citizens Advice is concerned that the conditions under which transitional protection is awarded or lost may result in people facing financial penalties at key points in their lives. For example, when they are considering taking a new job or separating from a partner.

2.1.2 Most people who face changes in their lives over the coming months which lead to a change in their benefits will naturally migrate to the benefit, meaning they will have to make a new UC claim without transitional protection payments. As the Social Security Advisory Committee noted,[4] families in identical circumstances will face significantly different and long-lasting financial outcomes based on arbitrary factors, such as the timing of when they move house or separate from a partner.

2.1.3 Groups who will lose out from the move to UC - such as disabled workers and home owner lone parents - may face a financial penalty simply because of the timing of when they move to the new benefit. This could have particularly worrying implications for people trying to escape an abusive relationship. We are concerned that the way transitional protections are awarded and then lost, combined with people's concerns about being worse off from a change of circumstance, will mean people having to put their lives on hold - or face a financial penalty.

2.2 Protecting those who face the biggest losses

2.2.1 Some groups face significant losses of income when they move on to UC from the legacy system. One such group is disabled people and their carers. The process of simplifying the system has meant that much of the additional specific financial support that was available to disabled people in a range of circumstances, to ensure they had enough to live on and maintain independence regardless of their particular circumstance, has been lost.

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[4] The Draft Universal Credit (Managed Migration) Regulations 2018: Report by the Social Security Advisory Committee, November 2018

2.2.2 The Government has rightly recognised the losses experienced by people who currently get a Severe Disability Premium (SDP) as part of their Employment and Support Allowance, Jobseeker's Allowance, Income Support or Housing Benefit claim. Legislation has recently been passed[5] which will prevent existing claimants in receipt of a SDP from naturally migrating to UC. This should help to protect around 500,000 SDP recipients who will now only move over through managed migration once transitional protection is in place[6]. We welcome this as it will provide increased financial security for disabled people who do not live with an adult carer.

2.2.3 The Government must **swiftly and proactively identify the 4,000+ claimants who have already naturally migrated to UC and were entitled to the SDP**. The original regulations stated that these claimants should also be entitled to transitional and backdated payments.

2.2.4 This protection however only applies to those who have been claiming legacy benefits. It will not help people who make a new benefit claim to UC or those who newly satisfy the conditions for the SDP. This includes those who have never claimed disability benefits before or those who become single through family breakdown.

2.2.5 Citizens Advice has been calling for[7] the DWP to consider **introducing a Self-care Element to UC of at least £156 a month** - this sets support at the same level as the Carer's Element in UC - for disabled people who live without an adult carer, and who satisfy the criteria for the Severe Disability Premium.

2.2.6 We also believe the Government needs to go much further in protecting other groups. The gateway conditions for SDP recipients will protect many who face large losses if they move to UC without protection. However, there are **many other disabled people and those with health conditions who face some of the largest losses in UC[8]**.

Our analysis shows that for disabled claimants this can include:

- people receiving the Disabled Worker Element in Tax Credits

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[5] The Universal Credit (Transitional Provisions) (SDP Gateway) Amendment Regulations 2019 came into force on 16 January 2019.

[6] Universal Credit for single disabled people, Citizens Advice, October 2018

[7] Citizens Advice response to the SSAC consultation on the managed migration regulations, October 2018

[8] Universal Credit for single disabled people, Citizens Advice, October 2018

- those doing Permitted Work in ESA
- people who get some other disability premium combinations that exclude the SDP[9], and
- disabled carers.

2.2.7 For example, as we have highlighted to the Committee previously[10], in spite of the welcome increases in the work allowance, announced in the Budget 2018, there are still some disabled people who stand to face substantial losses on UC:

- Working disabled people who are assessed as fit for work do not get the work allowance and can be over £300 a month worse off on UC compared to somebody getting the Disabled Worker Element that existed in Tax Credits[11].
- Permitted Work rules in Employment Support Allowance (ESA) allow disabled people to earn up to £125.50 per week without facing any reductions in benefit (equivalent to £6,526 per year). This is significantly higher than the increased work allowance for this group following the budget (equivalent to £3,430 per year).
- In addition, disabled carers can be £156 per month worse off. This is due to the fact that the Limited Capability for Work Related Activity Element and the Carer's Element cannot both be paid for the same person in UC. Under the legacy system a Carer's Premium is paid on top of other disability premiums and the Limited Capability for Work components.

2.2.8 There are also other groups who will be financially worse off under UC. These include:

- some parents with a disabled child
- some homeowners, including lone parents and people with a limited capability for work[12], and
- people who are self-employed.

For example:

- For parents with a disabled child under UC different rates of Disabled Child Element are paid, depending on the care needs of the child. If they qualify for the higher rate they will see little change in the amount of support they receive (approximately £4,600 a year).

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[9] Such as ESA-WRAG + Enhanced Disability Premium; or JSA + Disability Premium and Enhanced Disability Premium.

[10] Citizens Advice submission in response to the Budget 2018, November 2018

[11] Citizens Advice, UC for single disabled people, October 2018

[12] Back in credit? Universal Credit after Budget 2018, Resolution Foundation, November 2018

However, if their child needs daytime care, with only occasional night time care (our advisers tell us this is usually more typical) they will only qualify for the lower rate. This is £1,513.32 a year compared to £3,275 a year for the disabled child addition in Tax Credits - a loss of £1,762 a year or £147 a month.

- Self-employed households who are subject to the Minimum Income Floor (MIF) are also set to potentially lose even more following the 2018 Budget. Once the MIF is applied, the average self-employed household will see their household income reduce by £50.86 per week compared to legacy benefits[13]. This is because the level at which the MIF is set is determined by the National Living Wage, which is due to increase in April 2019.

Client case study (CA-142435444)

Gemma* is a single parent with a severely disabled child. She was previously in receipt of Income Support and Carer's Allowance. Her child receives the higher rate mobility and the middle rate care component of Disability Living Allowance. Due to a problem Gemma's Income Support stopped for a period of time. As there was a gap in her claim she then had to apply for Universal Credit. Previously she was receiving a combined income of £742 per month from Income Support and Child Tax Credit. Her UC payment is now £597 per month, a reduction in income of £145 a month.

*client name has been changed to protect anonymity

2.2.9 Following the introduction of the SDP gateway **as a matter of urgency the DWP should consider introducing similar enhanced gateway conditions for other groups, including those identified above, which face significant losses when comparing entitlement under UC to the legacy system. This will prevent them from naturally migrating without transitional protection.**

2.2.10 The Government announced in the Budget 2018 that from September 2020 the 12 month 'grace period' before the MIF is applied will be extended to all self-employed claimants who naturally migrate to UC. Currently this is only available to people who have started their businesses within the previous 12 months. While this development is welcome Citizens Advice has consistently highlighted[14]

[13] Budget 2018: How will incomes of people on Universal Credit be affected, Policy in Practice, November 2018

[14] Citizens Advice response to the SSAC consultation on the managed migration regulations, October 2018

that **given that we currently know so little about the effects of the MIF it's implementation should be paused until it has been fully evaluated, or at the very least the extension on eligibility for the grace period should be brought forward as soon as possible.**

3. What does the lack of a comprehensive list of "triggers" that can transfer people to Universal Credit mean in practice for claimants and the groups who support them? Should the Government produce a full list?
Are the existing "triggers" for natural migration appropriate? If not, how should they be changed?

3.1 Any change of circumstances that means a claimant would have had to make a new claim to one of the six legacy benefits that have been replaced by Universal Credit will now require people to make a claim for UC instead, although there are a few exceptions.

3.2 Changes of circumstances which only affect the amount of the legacy benefit(s) the claimant is getting, and which would not have required them to claim a different legacy benefit to get more help, will not usually result in migration onto UC[15]. These situations will normally only require an adjustment to an ongoing claim and can include when someone:

- on Working Tax Credit becomes responsible for a child and wants to claim Child Tax Credit
- on Child Tax Credit who starts to work over 16 hours and becomes entitled to Working Tax Credit
- on Housing Benefit moves to a different address within the same local authority and continues to claim Housing Benefit
- on Income-based ESA separates from their partner, or claims for a new partner.

3.3 Developing a comprehensive list of 'triggers' that can transfer people to UC is potentially very difficult. While legislation provides a comprehensive set of criteria which determine the thresholds of eligibility for all benefits, eligibility for any means-tested benefit is further complicated by different rules regarding the calculation of income and capital. For example, whether child maintenance is counted as income, the age profile of the household making the claim, and how

[15] DWP, A7/2018 (revised) Universal Credit full service areas: Guidance for local authorities, last updated 1 February 2019

many hours the claimants in a household work each week. Many of these rules have changed under UC.

3.4 None of this information is readily available in a format the general public can easily understand or make use of. In the majority of cases they will be reliant on the advice and support of others to help them with their claim. Ultimately in many cases it will be up to the person advising the claimant, be that job centre staff or someone working for a support organisation (eg. local authority, housing association or advice provider), to fully discuss the individual's circumstances with them to assess whether they will need to make a UC claim or not.

3.5 Due to the complexity of identifying appropriate 'triggers', and the potential financial implications for some legacy benefit claimants of moving on to UC, it is critical that all of those involved - claimants, Jobcentre, Local Authority and HMRC staff and advice/supporting organisations - have a comprehensive understanding of what constitutes a change of circumstances and what moving from legacy benefits to UC means for different claimants. We discuss this further in our response to question 4 below.

4. Has the Department for Work and Pensions done enough to help people to understand what changes in their circumstances might cause them to have to transfer to Universal Credit, and what that might mean for them? What more could it do?

4.1 The majority of people who naturally migrate to UC will do so because their eligibility for a particular legacy benefit has ended, or a change in circumstances means they are now entitled to more or less help from the benefits system.

In order to ensure these claimants receive the right advice it is important to initially establish whether:

- the claimant does or doesn't need to make a claim for UC depending on the nature of their change of circumstances
- the claimant can make a claim for UC, including checking if they are currently exempt eg. because they are in receipt of a SDP as part of their legacy benefit claims.

4.2 Protecting those who are wrongly advised from losing entitlement

Once someone claims UC, all of their claims for legacy benefits will end. It is therefore critical that legacy benefit claimants receive the correct advice on

whether they will need to make a claim for UC or not. In the majority of cases it will not be possible for them to return to legacy benefits, even if it transpires that the claimant has either been wrongly advised by DWP, HMRC or Housing Benefit departments or wrongly assessed, and should have remained on the legacy system. The latter can have serious financial consequences for claimants who are set to be worse off under UC. Not only will their income be reduced sooner than it needed to be, they will also lose access to any transitional protection. There is currently no clarity on the routes available to rectify this loss of income.

One type of situation that our advisers often raise is cases involving ESA appeals.

4.2.1 ESA appeals

4.2.1.1 Local Citizens Advice across England and Wales are seeing a number of cases where people who've had a change of circumstances have been incorrectly advised by job centre staff that they need to claim UC when they should have been able to remain on a legacy benefit. Particular examples include when a claimant on Employment and Support Allowance (ESA) fails their Work Capability Assessment (WCA) and wants to appeal the decision.

4.2.1.2 Most claimants should be able to claim ESA during this time, pending the appeal decision, following an initial wait whilst they go through the mandatory reconsideration (MR) process. Our advisers have told us however that some jobcentre staff appear not to have fully explained this option to some claimants. Instead some of our clients are being told they will have to make a claim for UC.

4.2.1.3 In cases where the original WCA decision is subsequently overturned claimants are unable to return to ESA - their ESA will only be reinstated up until the time they claimed UC. As a consequence these claimants are not only potentially missing out on any transitional protection during the managed migration process, they will also lose access to additional disability premiums available within the legacy system which aren't available in UC, including entitlement to the SDP.

4.2.1.4 Even for those who receive the correct advice, as the MR process can potentially be quite long, this can leave claimants with a near impossible choice - their need for money in the short term against potentially having a higher level of income in the longer term if their appeal is successful.

Client case study (CA-137557182)

Lisa* suffers from fibromyalgia and is in constant pain. She also suffers from anxiety. While challenging a decision on her ESA claim Lisa applied for UC. Following a mandatory reconsideration the original decision on her ESA claim was overturned. In spite of this outcome because she is now on UC Lisa is unable to go back to ESA. As a result she is now £70 a week worse off.

*client name has been changed to protect anonymity

Client case study (CA-138254368)

David* has severe mobility issues and suffers chronic pain. After undergoing an ESA Work Capability Assessment he was awarded 0 points and wanted to challenge this decision. During the Mandatory Reconsideration (MR) process he can no longer claim ESA. While he could claim UC he is aware that he would not be able to return to ESA and would be a lot worse off financially. He estimates he should be able to manage for about a month before he runs out of money and hopes the MR decision will come through before then. If the decision isn't changed he can go back onto ESA, pending an appeal. His local authority has received notification from the DWP that his ESA has stopped and as a result his Housing Benefit (HB) has also stopped. The local authority should be able to continue to pay his HB in this situation but processing times can lead to time delays and HB payments can stop in the interim. If his ESA is reinstated his HB should also be reinstated. However, this is now causing him additional stress and worry that he will lose his property as he cannot afford to pay his rent while he waits for the decision on his ESA claim.

*client name has been changed to protect anonymity

4.2.1.5 To ensure legacy benefit claimants retain financial security and to prevent them from potentially experiencing significant losses prematurely following a move to UC, Citizens Advice believes **all legacy benefit claimants challenging a decision in relation to their legacy benefit claim should be able to remain on that benefit until the final outcome of that challenge is known, including through the Mandatory Reconsideration stage.**

4.3 Protecting people from losing entitlement due to poor administration

When someone starts a claim for UC their legacy benefit claim(s) will end, regardless of whether their UC claim is successful. Our advisers are reporting cases where poor administration and errors in the system are resulting in some people losing benefit entitlement altogether when they shouldn't be. Particular examples include cases involving Right to Reside claimants.

4.3.1 Right to Reside

4.3.1.1 EEA nationals living in the UK who want to claim certain means-tested benefits must normally meet the conditions of the Habitual Residence Test (HRT). The purpose of the test is to show whether people have the right to live in the UK (known as the right to reside) and whether they intend to settle in the UK for the time being (this is known as habitual residence).

4.3.1.2 Local Citizens Advice across England and Wales helped **over 2,700 people with issues relating to the HRT and Right to Reside issues** within UC during 2018.

A growing number of cases involve existing legacy benefit claimants who have had a change of circumstances and need to apply for UC subsequently failing the Habitual Residence Test (HRT) when it is reapplied. There is often no or limited explanation as to why this is the case. As a claimant needs to meet HRT requirements before a UC payment is made this is leading to people being without income for significant periods of time, exacerbated by the fact that waiting times for a mandatory reconsideration decision can be up to 2 months.

Client case study (CA-148729884)

Peter* is an A8 national. He was previously in receipt of ESA but was required to claim UC after a change in circumstances. He subsequently failed the HRT however it would appear that the decision is incorrect because he has retained worker status, having worked in the UK for 5 continuous years. He rents privately and is now at risk of rent arrears. Citizens Advice helped him with his Mandatory Reconsideration request and he is currently awaiting the outcome.

*client name has been changed to protect anonymity

4.3.1.3 In order that people don't lose benefit entitlement unnecessarily Citizens Advice believes **DWP should consider reviewing which change of circumstances should trigger a HRT review for UC and which should not. It is also necessary to review the claims process and ensure it captures all relevant information to inform a HRT decision. In addition greater clarity should be provided to claimants on the reasons why they may have failed an HRT and the process for appealing this decision, if they should choose to do so.**

4.4 Ensuring decisions around natural migration are right/fully informed

4.4.1 If claimants experience a change of circumstances they should receive clear communications about what steps to take and what choices they have available. Work Coaches, UC helpline staff, and workers and advisers in supporting organisations should all be informed about how to support people in this situation.

4.4.2 As referred to above, our evidence indicates that currently some claimants are being wrongly advised by helpline/job centre staff on whether they need to make a UC claim or not. This can have serious financial consequences for those affected, resulting in them both missing out on longer term transitional protection and facing immediate reductions in income.

4.4.3 We therefore believe that **current guidance and training of UC helpline and job centre, Local Authority and HMRC staff needs to be improved to ensure they fully understand what change of circumstances do and don't necessitate the need for a claimant to make a claim for UC.**

4.4.4 There are also situations where the claimant could have a choice whether to claim UC or stay on legacy benefits. For example, where one person in a couple household is over pension age they may need to choose between claiming Pension Credit or UC.

4.4.5 In any of these situations it is important that the claimant fully understands the implications of making the transition to UC, both financially and practically (eg. managing a monthly payment regime, managing their claim online and providing evidence such as childcare costs and self-employed earnings on a monthly basis). In terms of the former it may also be useful for the claimant to have access to a better-off calculation - GOV.uk currently signposts to three independent benefit calculators.

4.4.6 To support this process **Citizens Advice believes DWP should consider tailoring communications to individual groups of claimants so that they're more appropriate for their particular circumstances**, depending on which legacy benefit(s) they are naturally migrating from. Lessons could be learned from similar approaches that have been used by the Department previously, for example following the introduction of the benefit cap[16]. Groups who may benefit from this additional support include carers and parents of young children re-entering the labour market after a period of economic inactivity or those experiencing a change in family structure eg. when couples separate or move in together.

4.5 Ensuring those who are exempt from natural migration are fully informed

4.5.1 As we noted earlier in our response Citizens Advice believes it is vital that greater protections are in place to prevent people who face the largest losses under UC from being moved onto the new benefit without full transitional protection - even if their change of circumstance would ordinarily necessitate making a new benefit claim.

4.5.2 In addition to putting these additional protections in place, it will be important for the Government **to establish a simple and practical process for informing all claimants who are subsequently identified as being eligible for any enhanced gateway conditions, as has been the case for SDP recipients.**

This should include informing all Work Coaches, UC helpline staff, support workers and advisers about how to support people in this situation. As we've cited throughout this response it is critical that people do not mistakenly begin a UC claim when they should be staying on legacy benefits. Screener questions added to the beginning of the UC claim are being used currently (eg. for people currently in receipt of a SDP) so the same approach should be used for people who fall into any subsequent group identified as being eligible for enhanced protection.

[16] Centre for Social Justice (2015) Reforming Tax Credits